

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
No. 4:19-cv-00008-FL**

**LAKIESHA CROSS; JOYCE FULFORD;  
DORTHEA EDMOND; BRIANNA  
TAYLOR; VANITY BENTON;  
FRENCESCO WEST; PARIS TAYLOR;  
PARIS TAYLOR, PARENT AND  
GUARDIAN OF C.P., JR., A MINOR;  
MATTHEW WOODRUFF; AND MAMIE  
PATTERSON, INDIVIDUALLY AND ON  
BEHALF OF ALL THOSE SIMILARLY  
SITUATED,**

**Plaintiffs,**

**v.**

**FORMATIV HEALTH MANAGEMENT,  
INC., AND ETRANSMEDIA  
TECHNOLOGY, INC.,**

**Defendants.**

**DEFENDANTS FORMATIV HEALTH  
MANAGEMENT, INC. AND  
ETRANSMEDIA TECHNOLOGY, INC.'S  
MOTION TO DISMISS WITH  
PREJUDICE**

Pursuant to Fed. R. Civ. P 12(b) and L. Civ. R. 7.1, Defendants Formativ Health Management, Inc. and Etransmedia Technology, Inc. (collectively, “Defendants”) respectfully move this Court for an order dismissing with prejudice Plaintiffs’ Amended Class Action Complaint (the “Amended Complaint”) in its entirety for the reasons that follow:

1. The Amended Complaint contains four separate counts against Defendants, alleging that Plaintiffs were overcharged by Defendants for their medical records.
2. In Count I, Plaintiffs allege Defendants violated the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”). In Counts II and III, Plaintiffs assert claims for negligent misrepresentation and unjust enrichment, respectively. Finally, in Count IV, Plaintiffs

seek a declaratory judgment and injunctive relief. The Court should dismiss with prejudice the Amended Complaint in its entirety for multiple reasons.

3. First, all of Plaintiffs' claims are premised upon violations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), neither of which provides a private cause of action. Plaintiffs cannot "bootstrap" an alleged violation of HIPAA/HITECH into a viable state law claim.

4. Second, Plaintiffs have alleged a relationship with Formativ that is purely contractual in nature, and Plaintiffs' claims for unfair trade practices, negligent misrepresentation, and unjust enrichment, and punitive damages cannot, as a matter of law, be predicated on a contractual relationship under the facts alleged.

5. Third, Plaintiffs fail to allege the required elements necessary to state a claim for a violation of the UDTPA, negligent misrepresentation, or unjust enrichment. Further, Plaintiffs' unjust enrichment claims are barred by the voluntary payment doctrine.

6. Finally, Plaintiffs' claims for declaratory and injunctive relief should be dismissed because Plaintiffs lack standing to seek injunctive relief, and all of Plaintiffs' claims underlying its request for declaratory and injunctive relief are deficient.

WHEREFORE for the reasons discussed more fully in the accompanying Memorandum of Law in Support of its Motion to Dismiss, Defendants request that the Court enter an order dismissing with prejudice Plaintiffs' Amended Complaint in its entirety.

Dated: June 27, 2019

**ALSTON & BIRD LLP**

*/s/ Matthew P. McGuire*

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Local Civil Rule 83.1(e)

*Counsel for Defendants*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 27, 2019, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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